

JEREMY W. KATZ (SBN: 119418)  
PINNACLE LAW GROUP LLP  
425 California Street, Suite 1800  
San Francisco, CA 94104  
Email: jkatz@pinnaclelawgroup.com  
Telephone: (415) 394-5700  
Facsimile: (415) 394-5003

Attorneys for Chapter 7 Trustee  
PAUL J. MANSDORF

UNITED STATES BANKRUPTCY COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re  
PICONGEN WIRELESS INC.,  
  
Debtor.

Case No. 12-48131 RLE 7

Chapter 7

TRUSTEE'S REPLY TO ROBERT O.  
GROOVER III'S OPPOSITION TO PROPOSED  
SALE (Docket No. 28); TRUSTEE'S  
OBJECTION TO MR. GROOVER'S MOTION  
FOR LEAVE TO FILE LATE OPPOSITION  
(Docket No. 24); AND TRUSTEE'S  
OBJECTION TO MR. GROOVER'S MOTION  
TO CONTINUE HEARING (Docket No. 25)

Date: January 9, 2013  
Time: 2:00 p.m.  
Place: Courtroom 201

The Honorable Roger L. Efremsky, United  
States Bankruptcy Judge

Bankruptcy Code § 704(a)(1) requires a bankruptcy trustee to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]" In other words, a bankruptcy trustee must liquidate assets for the benefit of creditors and not enter into speculative deals that will require the estate to remain open for years, require expensive and time-consuming litigation, and may not result in any greater distribution for creditors. The latter is what Robert O.

1 Groover III wants the Trustee to do, which will only benefit Mr. Groover and will make any  
2 distribution to creditors speculative.

3 The sale proposed by the Trustee to xStream Wireless Works will bring \$60,000 cash into  
4 the estate and will result in the withdrawal of \$1.7 million in claims against the estate. Mr.  
5 Groover's offer gives the estate \$10,000 cash plus maybe an additional \$25,000 in a year or so.  
6 That's it for cash. Any other monies the estate receives from Mr. Groover's offer will have to  
7 come from the Trustee's protracted and expensive litigation, and the estate has no money to fund  
8 it. And even if the litigation is pursued, the outcome is speculative. Mr. Groover's opposition  
9 should be overruled, his pleadings should be stricken as untimely, and his request for a  
10 continuance of the hearing should be denied.<sup>1</sup>

11 The case was originally filed as an involuntary petition. An order for relief was  
12 subsequently entered and the Trustee was appointed. The Trustee learned that several patent  
13 applications had expired and some were about to expire, but there was no estate money to pay for  
14 their renewal. He was contacted by xStream Wireless Works and negotiated a sale to xStream  
15 Wireless Works, subject to bankruptcy court approval and overbid procedures, that would ensure  
16 that the relevant patent applications did not expire pending court approval of the sale and that the  
17 estate would realize money for creditors.

18 On November 30, 2012, the Trustee filed his Motion for Order Approving Sale of  
19 Substantially all Assets of the Bankruptcy Estate Free and Clear of Certain Claims of Lien and  
20 other Interests (the "Sale Motion"), including Mr. Groover's alleged attorney's Lien. See Docket  
21 Nos. 15-17. Mr. Groover had contacted the Trustee's counsel, Jeremy W. Katz, more than two  
22 weeks prior to the filing of the Motion. Mr. Groover claimed he had an attorney's lien and  
23 wanted to make an offer for the intellectual property. Mr. Katz requested a copy of Mr.

---

24  
25 <sup>1</sup> Mr. Groover purports to be acting *pro se*. However, he is not acting in his own behalf--he is attempting to enforce  
26 an alleged attorney's lien which apparently is not in his own name but in the name of Groover & Associates PLLC.  
27 A company must be represented by a lawyer admitted in this jurisdiction. Mr. Groover is not listed as a California  
28 attorney on the State Bar's website and he has not been admitted *pro hac vice* in this case. Mr. Groover has filed a  
proof of claim in his own name for services rendered to the Debtor, but according to the time entries attached to the  
proof of claim, the services were provided by Groover & Associates, Storm LLP, and Glast, Phillips & Murray, a  
Professional Corporation. Again, these entities must be represented by a lawyer licensed to practice in this  
jurisdiction.

1 Groover's fee agreement with the Debtor (so Mr. Katz could analyze the validity of the alleged  
2 attorney's lien), but Mr. Groover never produced it. The conclusion to draw is that no written fee  
3 agreement exists. In Mr. Groover's Opposition to Proposed Sale (the "Opposition"), Mr. Groover  
4 states that "[t]he existence of this lien has been confirmed to the Trustee in writing by the debtor."  
5 Opposition, 7:6.1. Mr. Groover is apparently referring to the Affidavit of Dale Kluesing in which  
6 Mr. Kluesing states that Mr. Kluesing agreed that the patents could "be security for payment of  
7 his fees." Kluesing Affidavit, ¶4. But an oral agreement does not create an enforceable  
8 attorney's lien in California—there must be a writing which complies with certain provisions of  
9 California law as to adverse interests.

10 As the Trustee has argued in the Motion, Groover's alleged attorney's lien is in bona fide  
11 dispute. In California, an attorney's lien is created by contract. *Fletcher v. Davis*, 33 Cal.4<sup>th</sup> 61,  
12 66 (2004). In addition, an attorney's lien is an interest adverse to the client, so the attorney must  
13 comply with the requirements of Rule 3-300 of the Rules of Professional Conduct of the State Bar  
14 of California. *Id.*, at 71. Here, Groover has not provided the Trustee with any contractual  
15 agreement purporting to grant Groover an attorney's lien. Consequently, the Trustee has no  
16 evidence of any such lien and the alleged attorney's lien is in bona fide dispute. That is all that is  
17 required to approve the sale free and clear of Mr. Groover's alleged attorney's lien under  
18 Bankruptcy Code § 363(f)(4). It is not the Court's responsibility to determine the validity of the  
19 alleged lien prior to the sale, only that there is a bona fide dispute. "A sale free and clear from  
20 liens may be ordered before the validity and priority of the liens have been determined, the  
21 controversies being transferred to the funds." [Citations.] *Coulter v. Blieden*, 104 F.2d 29, 32  
22 (8<sup>th</sup> Cir. 1939).

23 The Motion also has overbid procedures. "The sale is subject to overbids. The first  
24 overbid for the Assets shall be \$70,000 PLUS all monies advanced by xStream Wireless Works to  
25 preserve the intellectual property estimated to be approximately \$14,000, and bidding will  
26 continue in \$1,000 increments thereafter. Overbidding will take place at the hearing on the  
27 Motion. Anyone wishing to overbid must submit a cashier's check in the amount of \$70,000  
28 made payable to "Paul J. Mansdorf, Trustee" plus proof of ability to perform no later 5:00 p.m.

1 PST on Wednesday, December 26, 2012, to the Trustee's counsel, Jeremy W. Katz, Pinnacle Law  
2 Group LLP, 425 California Street, #1800, San Francisco, CA 94104, Tel: (415) 394-5700. The  
3 Trustee reserves the right in his sole discretion to disqualify any prospective overbidder whom he  
4 believes will not be able to perform. If xStream Wireless Works is not the successful buyer, the  
5 Trustee will refund to it the monies it advanced to preserve the intellectual property." Mr.  
6 Groover has not complied with those procedures either in form or in substance. And, because Mr.  
7 Groover's offer is speculative, there is no proof that he can perform.

8 In the Opposition, Mr. Groover makes it abundantly clear that the involuntary bankruptcy  
9 was the culmination of a failed start-up that was unable to generate sufficient funding to bring its  
10 product to market. Mr. Groover himself is one casualty—he was not paid for his legal services  
11 for more than four years. Perhaps there is blame to go around for the failure of the company, but  
12 that is mere speculation. It is common knowledge that most start-ups fail.

13 The Trustee's proposed sale to xStream Wireless Works brings \$60,000 cash into the  
14 estate plus a waiver of approximately \$1.7 million in claims without the need for litigating claims  
15 (which will likely eat up much, if not all, of the \$60,000). Mr. Groover's offer brings \$10,000  
16 into the estate, with promises of \$25,000 more in a year or so, plus a waiver of approximately  
17 \$140,000 in claims. The rest is pure speculation. If Mr. Groover believes the alleged causes of  
18 action are so valuable, he should have made an appropriate overbid for the assets so he could  
19 purchase and pursue them. He did not. The proof is in the pudding.

20  
21  
22  
23  
24 [THIS SPACE INTENTIONALLY LEFT BLANK]  
25  
26  
27  
28

1 Under applicable legal standards, approval of a sale is appropriate if the court finds that  
2 the transaction represents a reasonable business judgment by the trustee. *Myers v. Martin (In re*  
3 *Martin)*, 91 F.3d 389 (3d Cir. 1996); *In re Abbots Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d  
4 Cir. 1986); *In re Wild Horse Enter., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). Nothing in  
5 the Opposition changes the Trustee's business judgment in proposing to sell the assets to xStream  
6 Wireless Works.

7  
8 Date: January 7, 2013

PINNACLE LAW GROUP LLP

9 By: Jeremy W. Katz  
10 JEREMY W. KATZ  
11 Attorneys for Trustee  
12 PAUL J. MANSDORF  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28